

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****SPECIAL CIVIL APPLICATION No. 10266 of 1999****For Approval and Signature:****HON'BLE MR JUSTICE KS JHAVERI**

- =====
- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
  - 2 To be referred to the Reporter or not ?
  - 3 Whether their Lordships wish to see the fair copy of the judgment ?
  - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
  - 5 Whether it is to be circulated to the civil judge ?

=====

**SUPERINTENDING ENGINEER - Petitioner(s)**

**Versus**

**KUTCH JILLA MAZDOOR SANGH - Respondent(s)**

=====

**Appearance :**

MS AVANI SHAH for MR MEHUL H RATHOD for Petitioner No(s).: 1.

RULE SERVED for Respondent No(s).: 1.

=====

**CORAM : HON'BLE MR JUSTICE KS JHAVERI**

**Date : 15/07/2005**

**ORAL JUDGMENT**

1. Though served none appears on behalf of the respondent workmen. Hence, the matter is taken up for final hearing today.

2. This petition is directed against the judgment and award dated 11<sup>th</sup> July, 1998 passed by the Industrial Tribunal, Rajkot in Reference [ITR] No. 78 of 1990, whereby the Industrial Tribunal has directed the petitioner Board to treat the present workmen permanent from the date they were given the benefits of Daulatbhai Parmar Committee's Report and to grant the arrears from 1<sup>st</sup> January, 1996 onwards.

3. The short facts of the case are that respondent workmen were working with the petitioner Board and were doing the work of permanent nature. Though the respondent workmen have completed 240 days of service, the petitioner Board has not made them permanent. Feeling aggrieved by the said action of the petitioner Board, the respondent workmen raised an industrial dispute before the Industrial Tribunal, Rajkot for adjudication. The Industrial Tribunal after appreciating the materials produced before it passed the impugned award. Hence, this petition.

4. Ms. Shah learned advocate for the petitioner Board has submitted that the term of Reference was as under :-

"Whether the workmen Shri Umar Ibrahim Sama and seven others as shown in the schedule should be made permanent and should be given wages and other benefits of permanent workmen with arrears?"

4.1. Ms. Shah has contended that though the respondent workmen had specifically admitted that they were granted the benefits of the Government Resolution dated 17<sup>th</sup> October, 1988, the Tribunal has directed to treat the present workmen as permanent from the date they were given the benefits of Daulatbhai Parmar Committee's Report and also the arrears from 1<sup>st</sup> January, 1996 onwards. She has further contended that there are no permanent posts available with the petitioner Board.

5. I have heard the learned counsel for the petitioner Board. Having perused the materials produced on record, it transpires that the Industrial Tribunal has committed an error in directing the petitioner Board to treat the respondent workmen as permanent employees because on the one hand the Industrial Tribunal in para 7 of its award has observed that there are other workers senior to the respondent workmen who had not approached the Industrial Tribunal and on the other hand it has directed the petitioner Board to treat the respondent

workmen as permanent. Thus, the junior workmen i.e. The respondents herein cannot be made permanent earlier than the senior workmen. Moreover, the Industrial Tribunal has not taken into consideration the Rules & Regulations of the petitioner Board. The Industrial Tribunal has passed the impugned award without ascertaining the fact as to whether permanent posts were available with the petitioner Board or not.

5.1. Apart from the above, since the respondent workmen are already granted the benefits of Government Resolution dated 17<sup>th</sup> October, 1988, I am of the opinion that they cannot get the benefits of Daulatbhai Parmar Committee's Report.

6. In above view of the matter, the petition is partly allowed. The impugned award dated 11<sup>th</sup> July, 1998 passed by the Industrial Tribunal, Rajkot in Reference [ITR] No. 78 of 1990, is modified to the extent that the petitioner Board shall grant the respondent workmen all the benefits flowing from the Government Resolution dated 17<sup>th</sup> October, 1988 only. So far as the direction with regard to the permanency is concerned, the same is quashed and set aside. However, it is made clear that as

and when permanent posts are available, the petitioner Board, shall consider the case of the respondent workmen in accordance with law.

7. With the above observations and directions the petition stands disposed of. Rule is made absolute to the aforesaid extent with no order as to costs.

**[K.S. JHAVERI, J.]**

/phalguni/